

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of

TAMPA CARGO S.A.S. d/b/a AVIANCA CARGO

for an exemption pursuant to 49 U.S.C § 40109

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DOT-OST-2020-0036

**APPLICATION OF TAMPA CARGO S.A.S. D/B/A AVIANCA CARGO
FOR AN EXEMPTION**

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**Counsel for Tampa Cargo S.A.S. d/b/a
Avianca Cargo**

December 21, 2021

NOTICE: Any person may support or oppose this application by filing an answer and serving a copy of the answer on the applicant and all persons listed on the attached service list on or before January 5, 2022. However, the applicant seeks expedited treatment of this application and will poll the carriers on the attached service list.

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Tampa Cargo S.A.S. d/b/a Avianca Cargo (“Tampa”) pursuant to 49 U.S.C. § 40109 and Subpart C of the Department's Rules of Practice in Title 14, Part 302, hereby applies for exemption authority authorizing Tampa to operate all-cargo services between the United States and any point or points.¹ Tampa requests that its exemption be granted for a two-year period.

Tampa also respectfully seeks expedited treatment of this application. The continued COVID-19 public health emergency, now well into its second full year, has placed tremendous strain on the worldwide supply chain. This ongoing emergency has created an enormous demand for Tampa’s cargo services and the additional rights sought in this application will be exercised immediately. The public interest supports expeditious

¹ On March 26, 2020, Tampa filed an application in this docket for an exemption to operate all-cargo services between the United States and any point or points. By motion dated April 23, 2021, Tampa moved to withdraw that application. As explained more fully herein, the new ownership structure of Tampa’s parent has changed related to its emergence from Chapter 11. Therefore, a new application is warranted. This instant application is filed in the original application’s place, and Tampa respectfully requests that in granting the instant application, the Department also grant Tampa’s pending motion.

grant of this exemption to provide shippers more options for cargo transportation to and from the United States to assist in easing the unprecedented burdens on the supply chain.

In support of this application, Tampa states as follows:

1. Tampa, a foreign air carrier of Colombia, holds a foreign air carrier permit authorizing it to engage (i) in scheduled and charter foreign air transportation of property and mail from points behind Colombia via Colombia and intermediate points to any point or points in the United States and beyond, and (ii) other charters pursuant to Part 212. See Order 2012-11-31.

2. On December 14, 2018, the U.S. and Colombia signed a Memorandum of Consultations (“MOC”) to amend the U.S.-Colombia Air Transport Agreement (the “Agreement”) of May 10, 2011.² Specifically, the parties agreed to amend Article 2, paragraph 1(c) of the Agreement to provide for seventh freedom all-cargo rights to carriers of both countries. The MOC expressed the intention of the parties to permit carriers to exercise these expanded rights on the basis of comity and reciprocity until the agreed protocol of amendment to the Agreement enters into force.³

3. Under the Agreement, substantial ownership and effective control of a carrier must be vested in nationals of the carrier’s homeland or the other party. As stated above, Tampa is a foreign air carrier of Colombia, authorized by Colombia to provide the

² See <https://www.state.gov/u-s-colombia-memorandum-of-consultations-and-ad-referendum-amendment-of-december-14-2018/>.

³ The U.S. also recently sent a delegation to the International Civil Aviation Organization (ICAO) Air Services Negotiation Event (ICAN 2021) in Bogota. Among other things, “The U.S. delegation also met with a number of international counterparts, including host country Colombia, to ensure fair competition for U.S. carriers, explore possibilities for new Open Skies agreements, further modernize existing agreements with civil aviation partners, and to share best practices on global aviation recovery from the devastation of the COVID-19 pandemic.” <https://www.state.gov/strengthening-u-s-open-skies-civil-aviation-partnerships/> (Dec. 10, 2021). Grant of the exemption requested herein will help further pandemic recovery.

services for which authority is sought. Tampa is a subsidiary of Aerovías del Continente Americano S.A. Avianca (“Avianca”). When the initial application for this authority was filed in 2020, Avianca was, in turn, a subsidiary of Avianca Holdings. On May 10, 2020, Avianca Holdings filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. Through a reorganization recently approved by the United States Bankruptcy Court for the Southern District of New York, the ultimate corporate owner of Avianca is now Avianca Group International Limited (“AGIL”), a private limited company organized under the laws of England and Wales.⁴ By letter dated December 6, 2021, the Department provided a waiver of its ownership and control standards for Tampa, finding that there was nothing in its ownership and control which would be inimical to U.S. aviation policy or interests.

4. The public interest will be served by the prompt grant of the authority requested herein. These expanded rights will provide Tampa with additional operational flexibility and will permit it to rapidly adjust its services to the needs of shippers in order to modernize and strengthen the aero-commercial relationship between the two countries. As has been well-documented in the press, supply chain issues have seriously affected shippers, stalling shipments of consumer goods at a time of immense demand. Grant of this authority will provide shippers additional options for cargo transportation to and from the United States and is consistent with Department precedent.⁵

⁴ AGIL and its subsidiaries and affiliates emerged from Chapter 11 on December 1, 2021.

⁵ See, e.g., Línea Aérea Carguera de Colombia S.A. d/b/a LATAM Cargo Colombia, Notice of Action Taken in Docket DOT-OST-2009-0038 (Nov. 12, 2021).

5. Tampa holds all necessary operating authorizations from its homeland government. Colombia is a contracting state to the Convention on International Civil Aviation.

6. Tampa's insurance coverage meets or exceeds the requirements of 14 C.F.R. Part 205. The current certificate is on file with the Department.

7. Tampa's aircraft maintenance program complies with ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7. Colombia is a contracting state to the Convention on International Civil Aviation.

8. Tampa remains fit, willing and able to perform the foreign air transportation services described in this application. Tampa will conform with the Department's statutory provisions, rules, regulations and other requirements

9. Grant of the authority sought by Tampa will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in Part 313 of the Department's Regulations.

10. Tampa intends to poll all parties served with a copy of this Application and will inform the Department of the results as soon as possible.

WHEREFORE, for the foregoing reasons, Tampa Cargo S.A.S d/b/a Avianca Cargo respectfully requests that the Department grant the requested exemption and pending motion as described more fully herein. Tampa also requests such further, different and additional relief as the Department may deem to be appropriate.

Respectfully submitted,



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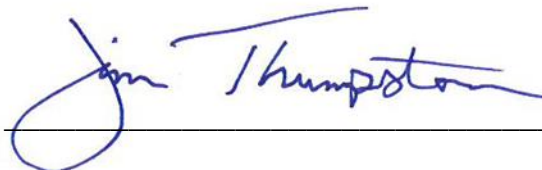
**Counsel for Tampa Cargo S.A.S. d/b/a
Avianca Cargo**

December 21, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing application of Tampa for an exemption has been served this the 21st day of December, 2021, upon each of the parties below by electronic mail.

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